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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,055	12/15/2003	Christopher P. Thorman	P3217US1	5217
29855 7590 07/20/2007 WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P. 20333 SH 249 SUITE 600 HOUSTON, TX 77070			EXAMINER LEWIS, CHERYL RENE A	
			ART UNIT 2167	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/737,055

Applicant(s)

THORMAN ET AL.

Examiner

Cheryl Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to the applicants' communication received on May 10, 2007.
2. Claims 1-76 are presented for examination. The applicants have not amended nor have the applicants cancelled any claims .
3. Applicants arguments with respect to claims 1-76 have been considered but are moot in view of the new grounds of rejection.

#### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As follows:

Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject. Claim 1 is a software claim. The preamble of claim 1 is claiming a file browser. A browser is a software application that enables a user to view documents.

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be

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a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Claim 1 needs to have hardware combined with the software of the claimed browser application. Combining hardware along with the browser application causes the software to be executable. The execution of the software enables the designating and displaying features of the claimed steps presented in independent claim 1 to become implemented into a functionally executable method.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-9, 11, 12, 14-17, 25-31, 33, 35, 36, 40-46, 49-55, and 61-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Kegel et al. (Publication No.: US 2003/0163519 A1 filed April 5, 2001).

8. Regarding Claims 1, 25, 40, 49, and 65, Kegel teaches changing hypermedia content of a web site.

The method and associated system for changing hypermedia content of a web site as taught or suggested by Kegel includes:

designating a plurality of file system locations (§0052, "...a hierarchical folder and file structure for PC 1a is shown in FIG. 3. At the top of the hierarchical structure is a folder 20 labeled "Desktop."; §0053, "The folder 23 comprises files held on a floppy disk when inserted into the floppy disk drive 7a of FIG.1. Folder 24 is a repository for files held on the hard disk 7b shown in FIG. 1 and folder 25 is a repository for files available through the CD/DVD ROM drive 7c of FIG. 1."; §0061, "The hierarchical folder structure for the "Lemon Catering"..."), wherein each file system location is associated with zero or more file objects (§0052, "At the top of the hierarchical structure is a folder 20 labeled "Desktop". This provides an overview of the files that are accessible by the PC 1a.

Beneath the top of the hierarchical structure is a lower level of folders or subfolders, shown to the right of folder 10, comprising folders 21 and 22.", §0053-0054); displaying a superset of the file objects associated with each of the designated file system locations in a single display (§0061, "...a root folder 33 named "Lemon Source" with the following sub-folders on the next lower level of the hierarchy "About Us"34,

"Contacts"<sup>35</sup>, "Products"<sup>36</sup> and "Services"<sup>37</sup>. For the next lower level of the hierarchy, the folder "Products"<sup>36</sup> has associated sub-folders "Meals"<sup>38</sup> and "Snacks"<sup>39</sup>. For the next lower level of the hierarchy, the folder "Meals"<sup>38</sup> has associated sub-folders "Breakfast"<sup>40</sup>, "Evening Meal"<sup>41</sup> and "Lunch"<sup>42</sup>"); a central processing unit (figure 1, element PC 1a); memory (figure 1, elements 9 or 10) operatively coupled to the central processing unit; a computer network (figure 1, element 11) coupled to the central processing unit; a display unit (figure 1 element 4); a storage device (figure 1, element 1a); and display on the display unit (§0057-0061, figure 2, element 16), a file-browser application (figure 2, element 18, §0051).

9. Regarding Claim 2, Kegel teaches the act of designating is performed explicitly by a user (§0060 and 0066, "The web page 49 also includes hyperlinks which permit the user to move through the hierarchical folder structure.").

10. Regarding Claims 3, 52, and 66, Kegel teaches the file system comprises a hierarchical file system (§0052).

11. Regarding Claims 4, 30, 42, 53, and 67, Kegel teaches the file system comprises a non-hierarchical file system (§0060).

12. Regarding Claims 5, 28, 41, and 51, Kegel teaches instructions to designate comprise instructions to designate the file system locations on at least two different computer systems (§0047, figure 1, elements PC 1a, PC 1b, and PC 1c, "FIG. 1 illustrates a conventional network in which a plurality of client workstations in the form of personal computers (PCs) 1a, 1b, 1c are connected by means of a network 2...").

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13. Regarding Claims 6, 29, and 55, Kegel teaches designating comprises designating a cached (§0048) file structure image as a file system location (figure 5).
14. Regarding Claim 7, Kegel teaches designating file system locations on at least two different computer systems comprises designating file system locations on at least two different computer systems (§0047, figure 1, elements PC 1a, PC 1b, and PC 1c, "FIG. 1 illustrates a conventional network in which a plurality of client workstations in the form of personal computers (PCs) 1a, 1b, 1c are connected by means of a network 2...").
15. Regarding Claims 8 and 54, Kegel teaches designating file system locations on at least two different computer systems comprises designating file system locations on at least two different computer systems (§0047, figure 1, elements PC 1a, PC 1b, and PC 1c, "FIG. 1 illustrates a conventional network in which a plurality of client workstations in the form of personal computers (PCs) 1a, 1b, 1c are connected by means of a network 2..." ) communicatively coupled by a personal area network (§0047, figure 1, elements PC 1a, PC 1b, and PC 1c, "FIG. 1 illustrates a conventional network in which a plurality of client workstations in the form of personal computers (PCs) 1a, 1b, 1c are connected by means of a network 2...").
16. Regarding Claims 9, 31, and 44, Kegel teaches displaying comprises identifying those file objects present in each of the designated file system locations in a first manner and those file objects present in only one of the designated file system locations in a second manner (§0052, "At the top of the hierarchical structure is a folder 20 labeled "Desktop". This provides an overview of the files that are accessible by the PC

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1a. Beneath the top of the hierarchical structure is a lower level of folders or subfolders, shown to the right of folder 10, comprising folders 21 and 22.”, ¶0053-0054, ¶0061, “...a root folder 33 named “Lemon Source” with the following sub-folders on the next lower level of the hierarchy “About Us”34, “Contacts”35, Products”36 and “Services”37. For the next lower level of the hierarchy, the folder “Products”36 has associated sub-folders “Meals”38 and “Snacks”39. For the next lower level of the hierarchy, the folder “Meals”38 has associated sub-folders “Breakfast”40, “Evening Meal”41 and “Lunch”42.”).

17. Regarding Claim 11, Kegel teaches identifying file objects in a first manner comprises displaying file objects using a first characteristic icon (¶0061, “...a root folder 33 named “Lemon Source” with the following sub-folders on the next lower level of the hierarchy “About Us”34, “Contacts”35, Products”36 and “Services”37. For the next lower level of the hierarchy, the folder “Products”36 has associated sub-folders “Meals”38 and “Snacks”39. For the next lower level of the hierarchy, the folder “Meals”38 has associated sub-folders “Breakfast”40, “Evening Meal”41 and “Lunch”42.”) and the act of identifying file objects in a second manner comprises displaying file objects using a second characteristic icon (¶0061, “...a root folder 33 named “Lemon Source” with the following sub-folders on the next lower level of the hierarchy “About Us”34, “Contacts”35, Products”36 and “Services”37. For the next lower level of the hierarchy, the folder “Products”36 has associated sub-folders “Meals”38 and “Snacks”39. For the next lower level of the hierarchy, the folder “Meals”38 has associated sub-folders “Breakfast”40, “Evening Meal”41 and “Lunch”42.”).



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18. Regarding Claims 12, 33, and 45, Kegel teaches identifying those file objects present in more than one and less all of the designated file locations in a third manner (¶0061, "...a root folder 33 named "Lemon Source" with the following sub-folders on the next lower level of the hierarchy "About Us"34, "Contacts"35, Products"36 and "Services"37. For the next lower level of the hierarchy, the folder "Products"36 has associated sub-folders "Meals"38 and "Snacks"39. For the next lower level of the hierarchy, the folder "Meals"38 has associated sub-folders "Breakfast"40, "Evening Meal"41 and "Lunch"42.").

19. Regarding Claims 14, 63, and 64, Saks teaches identifying file objects in a third manner comprises displaying file objects using a third characteristic icon (¶0061, "...a root folder 33 named "Lemon Source" with the following sub-folders on the next lower level of the hierarchy "About Us"34, "Contacts"35, Products"36 and "Services"37. For the next lower level of the hierarchy, the folder "Products"36 has associated sub-folders "Meals"38 and "Snacks"39. For the next lower level of the hierarchy, the folder "Meals"38 has associated sub-folders "Breakfast"40, "Evening Meal"41 and "Lunch"42.").

20. Regarding Claims 15, 61, and 75, the limitations of these claims have been noted in the rejections of claims 1 and 11 presented above. They are therefore rejected as set forth above.

21. Regarding Claims 16, 35, 46, 62, and 76, Kegel teaches visually associating information tags with at least one of the displayed file objects (¶0061, "...a root folder 33 named "Lemon Source" with the following sub-folders on the next lower level of the

hierarchy "About Us"<sup>34</sup>, "Contacts"<sup>35</sup>, "Products"<sup>36</sup> and "Services"<sup>37</sup>. For the next lower level of the hierarchy, the folder "Products"<sup>36</sup> has associated sub-folders "Meals"<sup>38</sup> and "Snacks"<sup>39</sup>. For the next lower level of the hierarchy, the folder "Meals"<sup>38</sup> has associated sub-folders "Breakfast"<sup>40</sup>, "Evening Meal"<sup>41</sup> and "Lunch"<sup>42</sup>.").

22. Regarding Claims 17 and 36, Kegel teaches visually associating information tags comprises visually associating one or more alphanumeric symbols with a displayed file object, the alphanumeric symbols identifying the number of designated file system locations associated with the file object (¶0061, "...a root folder 33 named "Lemon Source" with the following sub-folders on the next lower level of the hierarchy "About Us"<sup>34</sup>, "Contacts"<sup>35</sup>, "Products"<sup>36</sup> and "Services"<sup>37</sup>. For the next lower level of the hierarchy, the folder "Products"<sup>36</sup> has associated sub-folders "Meals"<sup>38</sup> and "Snacks"<sup>39</sup>. For the next lower level of the hierarchy, the folder "Meals"<sup>38</sup> has associated sub-folders "Breakfast"<sup>40</sup>, "Evening Meal"<sup>41</sup> and "Lunch"<sup>42</sup>.").

23. Regarding Claims 26 and 43, Kegel teaches instructions to designate a plurality of file system locations comprise instructions to permit a user to explicitly designate a plurality of file system locations (¶0060 and 0066, "The web page 49 also includes hyperlinks which permit the user to move through the hierarchical folder structure.").

24. Regarding Claims 27, 50, 68, and 69, Kegel teaches instructions to designate a plurality of file system locations comprise instructions to select one or more default file system locations (¶0060 and 0066, "The web page 49 also includes hyperlinks which permit the user to move through the hierarchical folder structure.").

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25. Regarding Claims 49 and 65, the limitations of these claims have been noted in the rejections of claims 1, 5, and 25 presented above. They are therefore rejected as set forth above.

***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claims 10, 13, 18-24, 32, 34, 37-39, 47, 48, 56-60, and 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kegel et al. (Publication No.: US 2003/0163519 A1 filed April 5, 2001) as applied to claim 1 above, and further in view of Starbuck et al. (Pub. No.: US 2003/0084096 A1 filed May 16, 2002, hereinafter Starbuck).

28. Regarding Claims 10, 13, 32, and 34, Kegel teaches displaying file objects in a first and second manner (¶0061, "...a root folder 33 named "Lemon Source" with the following sub-folders on the next lower level of the hierarchy "About Us"34, "Contacts"35, Products"36 and "Services"37. For the next lower level of the hierarchy, the folder "Products"36 has associated sub-folders "Meals"38 and "Snacks"39. For the next lower level of the hierarchy, the folder "Meals"38 has associated sub-folders "Breakfast"40, "Evening Meal"41 and "Lunch"42.").

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However, Kegel does not expressly teach displaying file objects in a first and second color.

Starbuck teaches displaying file objects in a first and second color (paragraphs 0104 and 0114-0118).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the display browser window of Kegel's method with the true color environment of Starbuck's method because Starbuck's true color environment could enable the display browser window of Kegel's method to enhance and define the objects of the display browser window, wherein the true-color image is nearly a photographic color that is presented through a process of allocating an increased amount of memory to each pixel of a display (see Starbuck, paragraph 0116).

29. Regarding Claims 18, 37, 47, 56, and 70, Starbuck teaches selecting a display file object (paragraph 0063); issuing a command against the selected file object (paragraph 0063); and copying the selected file object to a specified the location in each of the designated file system locations that it is not already associated with in response to the command (paragraphs 0102 and 0103).

30. Regarding Claims 19, 38, 57, and 71, Starbuck teaches a file object displayed in a non-superset file-browser (paragraph 0064); graphically dragging and dropping the selected file object to a specified location in the designated file system locations (paragraph 0013); and copying the selected file object to the specified location in each of the designated file system locations in response to dragging and dropping (paragraphs 0102 and 0103, figure 3B, element 312 'Copy this file').

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31. Regarding Claims 20, 39, 58, and 72, Starbuck teaches copying the selected file object in accordance with a specified merge policy (paragraphs 0118 and 0123).

32. Regarding Claim 21, Starbuck teaches the specified merge policy comprises a write-over merge policy (paragraphs 0041, 0118, and 0123).

33. Regarding Claim 22, Starbuck teaches the specified merge policy comprises a copy-the-latest file object merge policy (paragraphs 0118 and 0123).

34. Regarding Claims 23, 48, 59, and 73, the limitations of these claims have been noted in the rejections of claims 1, 18, and 19 presented above. They are therefore rejected as set forth above.

35. Regarding Claims 24, 60, and 74, the limitations of these claims have been noted in the rejections of claims 18 and 19 presented above. In addition, Starbuck teaches a directory indicating a designated location (paragraph 0071).

***NAME OF CONTACT***

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Lewis whose telephone number is (571) 272-4113. The examiner can normally be reached on 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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(571) 273-4113 (Use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper/amendment be faxed directly to them on occasions.).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/ Technology Center (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Lewis/  
Patent Examiner, A.U. 2167  
July 18, 2007